No. 89

IN THE

Supreme Court of the United States

October Term, 1940

FIRST NATIONAL STEAMSHIP COMPANY, SECOND NATIONAL STEAMSHIP COMPANY, THIRD NATIONAL STEAMSHIP COMPANY, ALL CORPORATIONS ORGANIZED UNDER THE LAWS OF THE STATE OF NEW JERSEY, AND H. O. SCHUNEMAN, INDIVIDUALLY AND AS SOLE STOCKHOLDER OF FIRST NATIONAL STEAMSHIP COMPANY, SECOND NATIONAL STEAMSHIP COMPANY, AND THIRD NATIONAL STEAMSHIP COMPANY, AND AS SOLE DIRECTOR AND EXECUTIVE COMMITTEE OF ONE, AND AS TRUSTEE FOR THE BENEFIT OF SUCH CORPORATIONS, AND AS AGENT THEREFOR,

Petitioner,

vs.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, FORMERLY THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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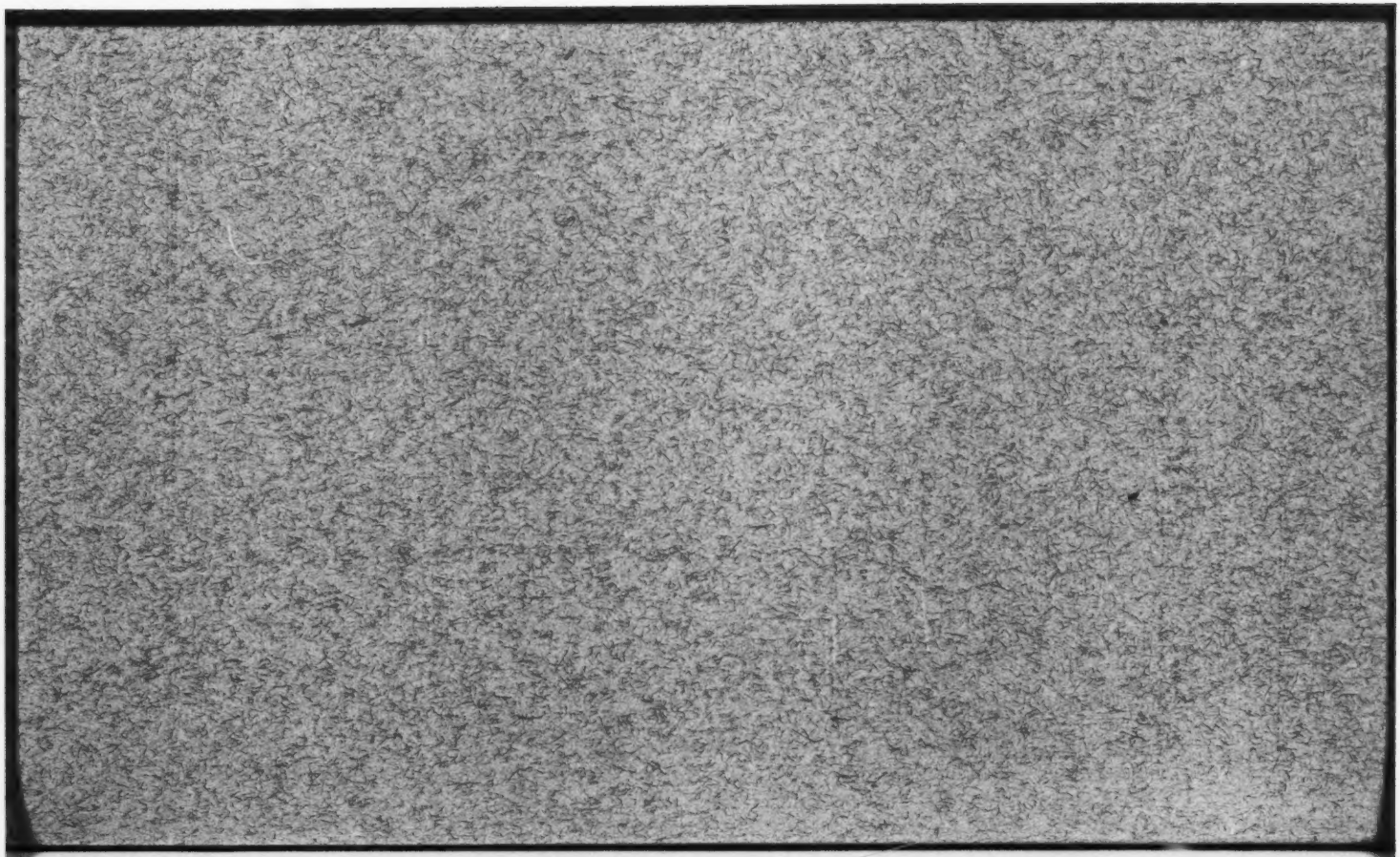

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The undersigned, on behalf of the First National

Steamship Company, et als, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered on February 17, 1941. (R. 28).

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia (R. 22-27) is not yet reported.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

The decision of the court below involves a title and right specifically set up and claimed by the petitioner under the Constitution and laws of the United States within Section 240 of the Judicial Code as amended.

QUESTION PRESENTED

The single question presented is whether Section 203(a) of the Merchant Marine Act of June 29, 1936,[1] had the effect of completely dissolving the United States Shipping Board Merchant Fleet Corporation so that after the effective date of that Act that corporation could not be sued.

STATEMENT

The petitioners brought suit in the District Court of the United States for the District of Columbia against

[1] 49 Stat. 1985, 1987; 46 USC 1113. See Appendix A.

the United States Shipping Board Merchant Fleet Corporation and others. Upon motion of the defendants in the District Court the action was dismissed as against all of the defendants except the United States Shipping Board Merchant Fleet Corporation upon the ground that the Court lacked jurisdiction thereof. Subsequently, the Fleet Corporation filed a Motion to Dismiss, which motion was overruled and the lower court allowed a special appeal from such ruling of the District Court.

Your petitioners sued in the District Court to recover certain sums of money which had been deposited by them with the Fleet Corporation, for interest thereon, and for compensatory and punitive damages for the unwarranted retention by the Fleet Corporation of their monies.

The Court of Appeals for the District of Columbia reversed the decision of the District Court upon the ground that the Merchant Marine Act of 1936 (supra) "not only dissolved the Fleet Corporation and was an express withdrawal of consent by the United States that suit might be thereafter brought against that dissolved corporation, but also furnished an exclusive forum, the Court of Claims, in which suits growing out of the transactions of the dissolved corporation should thereafter be brought, and in which the United States, in assuming full responsibility, agreed to abide the outcome of the litigation."

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the District of Columbia erred:

(1) In reversing the District Court and in dismissing the Complaint filed by your petitioners therein.

(2) In holding and in deciding that the Merchant Marine Act of 1936 was effective as an express withdrawal of consent by the United States that suit might thereafter be brought against the Fleet Corporation.

(3) In holding and in deciding that the Merchant Marine Act of 1936 had the effect of furnishing an exclusive forum, i.e., the Court of Claims of the United States, in which suits growing out of the transactions of the dissolved corporation should thereafter be brought.

(4) In holding and in deciding that the Merchant Marine Act of 1936 deprived the United States District Court for the District of Columbia of jurisdiction in the premises.

(5) In holding and in deciding that the Merchant Marine Act of 1936 had the effect of repealing the Code of Laws of the District of Columbia in respect of the manner of the liquidation and dissolution of private corporations organized and existing under and by virtue thereof.

(6) In holding and deciding that the Merchant Marine Act of 1936 had the effect of enlarging the jurisdiction of the Court of Claims of the United States so as to make the United States suable in that Court, in this instance for interest upon monies deposited by your petitioners with a private corporation, i.e., the Fleet Corporation, and in this instance in an action sounding in tort.

(7) In reversing the decision and holding of the District Court.

REASONS FOR GRANTING THE WRIT

(1) The Court of Appeals, in reversing the District Court and in dismissing the Complaint herein, predicated its decision entirely upon the premise that the Merchant Marine Act of 1936 provides a complete method of liquidation of the Fleet Corporation in substitution for the method provided by the Code of Laws of the District of Columbia; that the United States, by the enactment of the Merchant Marine Act of 1936, had assumed all of the obligations of the Fleet Corporation, presumably including that corporation's obligation to pay interest upon obligations of the character sued upon by petitioners in the District Court and presumably including the obligations of that corporation sounding in tort.

(2) Precisely the same reasoning as that employed by the Court of Appeals in reaching its decision and conclusion might be applied with equal force in determining that the jurisdiction of the United States District Courts was enlarged by the Merchant Marine Act of 1936 to include actions against the United States, as the assumer of the obligations of the Fleet Corporation, even though, in particular cases, the amount in controversy exceeded the sum of $10,000.[1]

(3) In order to protect whatever rights they may have, your petitioners intend to institute an action in the Court of Claims of the United States and there seek the recovery of the monies which they deposited with the Fleet Corporation and to also seek an award of interest upon such monies and an award of compensatory and punitive damages in an action sounding in tort. However, should the Court of Claims of the

[1] See Appendix B.

United States entertain a view different from that of the Court of Appeals of the District of Columbia and decide that the Merchant Marine Act of 1936 did not, as concluded by the Court of Appeals of the District of Columbia, have the effect of amending the Tucker Act,[1] the right of your petitioners to pursue their remedies against the Fleet Corporation or against the United States in any Court of the United States would have been lost.

(4) Unless the petition herein is granted your petitioners may be deprived of valuable property rights which are guaranteed to them under the Fifth Amendment to the Constitution of the United States, i.e., their right to sue the Fleet Corporation, as a private corporation, for their monies, for interest, and for damages in an action sounding in tort.

(5) An important question of Federal law is presented as the United States has undertaken, by legislative fiat, to dissolve a private corporation which was organized and which existed under the laws of the District of Columbia without affording adequate protection to petitioners and other creditors of such corporation.

(6) Your petitioners are informed, and therefore assert, that there are a large number of private corporations which have been created by, or availed or by, the Government of the United States, to deal, as private corporations, with citizens of the United States and others. It is, therefore, of transcendent importance that the Court issue the writ herein prayed for in order that those who have dealt, are dealing, or may deal with such corporations, may know the extent of their rights

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[1] Mar. 3, 1887, c. 359, Sec. 1, 24 Stat. 505; Mar. 3, 1911, c. 231, Sec. 145, 36 Stat. 1136. See Appendix C.

against such corporations, the forum or forums before which they may seek redress against such corporations and whether or not the Congress of the United States may undertake, by legislation such as Section 203(a) of the Merchant Marine Act of 1936, to dissolve such corporations, to repeal the laws of the political subdivisions under which they were created and transacted business, and to thus deprive creditors of valuable rights upon the faith of which they dealt with such corporations.

(7) The Court of Appeals of the District has held that Section 203(a) of the Merchant Marine Act of 1936 has had the effect

(a) of dissolving the United States Shipping Board Merchant Fleet Corporation for all purposes;

(b) of having made the Fleet Corporation immune to suit;

(c) of depriving *bona fide* creditors of the Fleet Corporation of their right to pursue the assets of such corporation in the manner provided for by the Code of Laws of the District of Columbia;

(d) of stripping the Fleet Corporation of all of its assets including property, in respect of which it has and had no right, title or interest, i.e., cash deposited in escrow or in trust by your petitioners with that corporation;

(e) of restricting the limits of the jurisdiction of the United States District Courts by sheer implication and for that matter of State Courts;

(f) of broadening the jurisdiction of the Court of Claims of the United States to include actions against the United States for interest in cases similar to this,

of which the Court of Claims and this Court has repeatedly held it is without jurisdiction;

(g) of holding that the Tucker Act is amended by Section 203(a) of the Merchant Marine Act of 1936, so that the jurisdiction of the Court of Claims has been broadened to include actions based upon claims for compensatory and punitive damages in claims or cases sounding in tort.

(8) The Court of Appeals of the District of Columbia cited no authorities in support of its conclusion and decision. Counsel for your petitioners know of no decisions, of this or any other Court, which lend support to the position adopted by the lower court.

(9) The decision of the Court of Appeals of the District of Columbia is in direct contravention of the rules of statutory construction which have repeatedly been recognized and affirmed by this Court in that, though the Merchant Marine Act of 1936 specifically repeals certain prior Federal laws and parts of such laws, it does not purport to repeal, modify or extend the Code of Laws of the District of Columbia, the Tucker Act, or Section 24 of the Judicial Code, which determines the jurisdiction of the United States District Courts. Moreover, Section 203(a) of the Merchant Marine Act of 1936 is silent in respect of the other Federal laws which the Court of Appeals of the District of Columbia has held to be repealed, modified or extended.